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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1074 OF 1988

State of Maharashtra) ... Appellant
(Orig. Complainant)

Versus

1. Subhash Aba Bodke)
age 28 years,)
Occ. Agriculturist.)

2. Kisabai Aba Bodke)
age 45 years,
Occ. house-hold duties)
both residing at Ashta, Tal.)
Islampur, Dist. Sangli.) ... Respondents
(Orig. Accused 1 & 2)

Ms. A.S. Pai, A.P.P. for the appellant-State.

Mr. N.V. Pradhan with Smt. S.D. Khot for respondents.

CORAM: SMT. RANJANA DESAI &
A.S. OKA, JJ.

DATED: 15TH OCTOBER, 2004.

ORAL JUDGMENT:- (**Per Smt. Ranjana Desai, J.**)

1. The respondents (for convenience, "accused 1 and 2 respectively") were tried in the Court of Sessions Judge, Sangli at Sangli in Sessions Case No.128 of 1987 for the offences punishable under sections 498A, 304B and 306 read with section 34 of the Indian Penal Code (for short, "the IPC"). By the judgment and order dated 11/8/1988,

the learned Sessions Judge acquitted the accused. Being aggrieved by the said judgment and order dated 11/8/1988, the State of Maharashtra has preferred this appeal against acquittal.

2. At the trial, the case of the prosecution was as follows. The complainant PW-1 Keshav is the resident of Khandobachivadi from Village Bhilavadi. He is the father of deceased Bharati. He has two sons viz. Prakash and Gajanan. He has two more daughters viz. Jijabai and Shalan. Shalan and Jijabai are married. Accused 1 Subhash is the husband of the deceased. Their marriage took place on 29/5/1985. Accused 2 Kisabai is the mother of accused 1 Subhash. After marriage, the deceased started residing at the house of the accused, which is at a distance of about two miles from Ashta.

3. It is the case of the prosecution that after marriage, the deceased had come to her father’s place in Jestha month. She had also come to her father’s house in the month of Ashadha and then at the time of Divali festival. At the time of Divali festival, she stayed at her father’s house for about 7 days and then she went to the house of accused 1. At that time, her parents gave her one saree and one blouse. They had also given her

some sweetmeats. Thereafter, she again came to her father's house in the month of Poushya. At that time, she stayed there for about one month. As per the case of the prosecution, at that time, the deceased told her father that accused 2 Kisabai had told her that the clothes which were given to her at the time of Divali festival were of inferior quality and the sweetmeats were given to the cattle by her. She also told him that accused 2 Kisabai was harassing her.

4. The deceased came to the house of her father during Padva festival. She stayed there for about 8 to 10 days. At that time, the deceased told her father that accused 1 used to tell her that she should bring money from her father as the other wives were bringing from their fathers. She also told him that her husband had told her to bring Rs.5,000/- from her father and had threatened her that in case she does not bring the amount, he would not maintain her. Then her father PW-1 Complainant Keshav collected Rs.5,000/- and handed over the said amount to the deceased for giving it to accused 1. Thereafter, he sent back the deceased to the house of accused 1 with his son PW-2 Prakash. In the month of Bhadrapada, the deceased was brought to his house by PW-1 Keshav for delivery. He had sent his son PW-2 Prakash

and his wife to the accused's house for that purpose. She delivered a male child. For the naming ceremony of the child, accused 2 Kisabai and her elder daughter-in-law had gone to the house of PW-1 Keshav. They had brought one gold locket. The child was named Pramod. Accused 2 Kisabai and her elder daughter-in-law then went back to their house. At the time of Akshaya Trutiya, the father-in-law of the deceased came to the house of PW-1 Keshav and took the deceased and her child to his house.

5. At the time of Panchami festival, the deceased and the child were brought to his house by PW-1 Keshav. They stayed there for about 8 to 10 days. At that time, the deceased told him that her monther-in-law was harassing her and that they should make some ornaments for her son. Thereupon, PW-1 Keshav told her that it was not possible for him to make the ornaments as his financial condition was poor. Then PW-1 Keshav purchased some clothes for his grandson and sent the deceased and her child with his son PW-2 Prakash to the house of the accused.

6. About 2 to 3 weeks thereafter, PW-1 Keshav had gone to the house of the accused. At that time, the deceased told him that her husband was insisting for a locket of

half tola of gold for her child and a locket of two tolas of gold for himself. The deceased also told him that her husband had told her that in case these ornaments were not given to him, he would not maintain her. PW-1 Keshav told the deceased that he was not in a position to give these ornaments on account of his poor financial condition. He then returned to his house.

7. According to the prosecution, about 10 to 12 days thereafter at about 12 noon, the father of accused 1 Subhash had been to the house of PW-1 Keshav with some other persons. He told him that the deceased had gone away with her child. It appears that the father-in-law of the deceased had filed a missing complaint at about 7.00 p.m. at the Ashta police station, which is at Ex-22.

8. PW-1 Keshav then went to Ashta police station on 20/9/1987 at about 10.00 a.m. At that time, one person came to the police station and told him that his daughter Bharati was seen lying in a well. He then lodged a complaint at the Ashta police station at about 10.00 a.m., which is at Ex-16.

9. Thereafter, PW-5 PHC Phadatare, who was attached to

Ashta police station registered Crime No.96/1987 for the offences punishable under sections 498A, 304B and 306 read with section 34 of the IPC. On the basis of this complaint, the investigation began.

10. PW-6 PSI Shinde visited the place of incident and body of deceased Bharati was taken out from the well. Her seven month old child was found tied to her body by a chaddar. The deceased and her child were then separated. Inquest panchnama was drawn. After investigation was completed, the accused came to be charged as aforesaid.

11. In support of its case, the prosecution examined seven witnesses. The prosecution story basically rests on the evidence of the father of the deceased. PW-1 Keshav, who had lodged the complaint. The prosecution also examined PW-2 Prakash, the brother of the deceased. Two neighbours PW-3 Pratap and PW-4 Vijaykumar were also examined to prove the prosecution case of cruelty and harassment, meted out to the deceased. The details of investigation were given by PW-5 PHC Phadatare, PW-6 PHC Shinde and PW-7 PSI Sayyed.

12. The defence of the accused was one of denial. The accused filed their written statement, which is at Ex-26.

According to the accused, on the day of the incident, deceased Bharati and her mother-in-law were cooking food in the kitchen. At that time, the child of Bharati was crying. Therefore, accused 2 Kisabai told her to feed the child first. Hence, she went to the padavi with her child. Accused 2 Kisabai continued cooking the food in the kitchen. She thought that Bharati must be in the padavi feeding the child. Within a short time, accused 1 Subhash came to the house. He then asked accused 2 Kisabai about Bharati. She told him that Bharati is sitting in the padavi with her son. Accused 1 did not see Bharati in the padavi. So he enquired in the neighbouring areas. However, he could not find Bharati. Thereafter, the father of accused 1 came to the house. He was also informed about the fact that Bharati was not found in the house. He told them that he would go to the house of Bharati at Ashta to see whether she had gone there. He then went to the house of Bharati's sister but, Bharati was not there. Then he went to the house of PW-1 Keshav to make enquiry. However, Bharati was not found there also. Then he went to Padvalwadi to the house of the other sister of Bharati. There also, Bharati was not found. Thereafter, father of Bharati informed the police. In short, the accused claimed to be innocent. The accused, however, led no defence evidence.

13. After perusing the evidence on record, the trial court came to the conclusion that the prosecution had not proved its case beyond reasonable doubt and, acquitted the accused. Hence, this appeal.

14. We have heard, at considerable length, the learned counsel appearing for both sides and with their help, we have gone through the record of the case.

15. Ms. Pai, learned A.P.P. appearing for the State contended that the trial court erred in acquitting the accused. She submitted that the prosecution has clearly made out a case under sections 498A, 304B and 306 read with section 34 of the IPC. She submitted that the evidence of PW-1 Keshav inspires confidence. It is clearly established by the evidence of PW-1 Keshav that the deceased was ill-treated in the house of the accused and several demands were made on her to bring gold, money, lockets, etc. from her father. The learned counsel contended that the trial court has not considered the effect of presumptions under sections 113A and B of the Evidence Act. Relying on the judgment of the Kerala High Court in **State of Kerala v. Rajayyan and others, 1995 Cri.L.J. 989**, the learned A.P.P. contended that

the cruelty towards the wife or harassment of a lady are generally committed in the privacy of residential homes and in secrecy and, therefore, independent and direct evidence may not be easily produced before the court. She submitted that the evidence in this case may be appreciated keeping this aspect in mind. Relying on **State of Himachal Pradesh v. Nikku Ram and others, AIR 1996 SC 67**, she submitted that even if the demand for money or property is made long after the marriage, the same could constitute dowry. The learned A.P.P. also urged that an offence under section 306 of the IPC is made out as there is clear indication in the evidence of PW-1 Keshav that on his last visit to the house of the deceased she had told him that her husband was insisting for a locket of half tola of gold for the child and a locket of two tolas of gold for himself and that he had also told her that in case these ornaments were not given to him, he would not maintain her. The incident in question took place about 10 to 12 days thereafter.

Therefore, section 306 of the IPC is clearly attracted.

16. The learned A.P.P. also contended that the trial court has recorded the concession made by the learned public prosecutor that offence under section 304B is not made out. She drew our attention to the judgment of

division bench of this court to which one of us (Smt. Ranjana Desai, J.) is a party, in **Criminal Appeal No.363 of 1988 delivered on 6th & 7th July, 2004**, where a similar concession was made by the public prosecutor and this court has observed that when the evidence was led before the trial court, the trial court ought to have considered the entire evidence on record and not simply gone by the concession made by the public prosecutor unless the learned judge himself was satisfied that the concessions made by the public prosecutor were correctly made. She submitted that the concession in this case is wrongly made and, therefore, this court should ignore the concession and convict the accused. She further submitted that case against accused 1 and 2 is clearly made out from the evidence of PW-1 Keshav and, therefore, order of acquittal be set aside and the accused be punished in accordance with law.

17. Mr. Pradhan, the learned counsel appearing for the accused reminded us that we are dealing with an appeal against acquittal. He contended that unless the judgment of the trial court is perverse, it is not permissible for us to interfere with it. In this connection, the learned counsel relied upon the judgments of the Supreme Court in **Sheo Swarup and others, v. King Emperor, AIR 1934 Privy**

Council 227 (2), Surajpal Singh and others v. The State, AIR (39) 1952 SC 52, Shivaji Sahabrao Bobade and another v. State of Maharashtra, (1973) 2 SCC 793, Ganesh Bhavan Patel and another v. State of Maharashtra, AIR 1979, SC 135, Ajit Singh Thakur Singh and another v. State of Gujarat, (1981) 1 SCC 495, Chandra Kanta Debnath and others v. State of Tripura, (1986) 1 SCC 549, Tota Singh and another v. State of Punjab, AIR 1987 SC 1083, Ramesh Babulal Doshi v. State of Gujarat, (1996) 9 SCC 225 and

Anil Kumar v. State of Punjab, (2000) 9 SCC 455.

18. Mr.Pradhan further submitted that the evidence of PW-1 Keshav does not give any particulars about the alleged ill-treatment or harassment or wilful conduct of the accused, which was likely to drive Bharati to commit suicide. He submitted that his evidence is totally vague. It is not stated by PW-1 Keshav that the deceased was beaten up and that she was not given food and clothes. He submitted that there is no perceptible nexus between the alleged cruelty and the death of Bharati. The learned counsel urged that the prosecution should have examined independent witnesses like some neighbours of the complainant to establish its case of cruelty. He submitted that though their statements were recorded, they were not examined by the prosecution which casts a

shadow of doubt on the prosecution story. He further submitted that the other evidence i.e. the evidence of the son and the neighbours of the complainant is also not sufficient to establish the allegations of cruelty and has been rightly discarded by the trial court. The learned counsel heavily relied on the judgments of the Supreme Court in **Satvir Singh and others v. State of Punjab and another, (2001) 8 SCC 633** and **Mungeshwar Prasad Chaurasia and another v. State of Bihar, (2002) 10 SCC 163**. The learned counsel also placed reliance on the judgment of the Supreme Court in **Sanju alias Sanjay Singh Sengar v. State of Madhya Pradesh, (2002) 5 SCC 371** to contend that offence under section 306 is also not made out because there is a gap between the last visit of the father to the house of the deceased and the date of the incident within which the lady could have thought over and reflected. The suicide by the deceased was not proximate to the last incident. Hence, the accused cannot be convicted under section 306 of the IPC. The learned counsel further contended that, in any event, no offence is made out against accused 2 Kisabai and, hence, her acquittal should be confirmed.

19. We are mindful of the fact that we are dealing with an appeal against acquittal. We have gone through

several judgments to which our attention has been drawn by Mr. Pradhan, the learned counsel for the accused. We will only refer to three of them because the principles are well settled. In **Sheo Swarup's case (supra)** the Privy Council has held that "in an appeal against acquittal, the High Court has full power to review at large the evidence upon which the order of acquittal was founded, and to reach the conclusion that upon that evidence the order of acquittal should be reversed. No limitation should be placed upon that power, unless it be found expressly stated in the Code. But in exercising the power conferred by the Code and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a judge who had the advantage of seeing the witnesses".

20. In subsequent judgments, the Supreme Court has

consistently followed the above observations of the Privy Council. In **Ganesh Bhavan Patel's case (supra)**, the Supreme Court has further added that "where two reasonable conclusions can be drawn on the evidence on record, the High Court should, as a matter of judicial caution, refrain from interfering with the order of acquittal recorded by the court below. In other words, if the main grounds on which the court below has based its order acquitting the accused, are reasonable and plausible, and cannot be entirely and effectively dislodged or demolished, the High Court should not disturb the acquittal".

21. In **Tota Singh's case (supra)**, the Supreme Court has further added that "where two views are possible on an appraisal of the evidence adduced in the case and the court below has taken a view which is a plausible one, the appellate court cannot legally interfere with an order of acquittal even if it is of the opinion that the view taken by the court below on its consideration of the evidence is erroneous."

22. Keeping these principles in mind, we will appreciate the evidence.

23. Before we deal with the evidence, we must refer to the inquest panchnama and postmortem notes. The inquest panchanama (Ex-8) notes that deceased Pramod was tied with a chadar to the stomach of deceased Bharati; that the police took out both the dead bodies from the well and that both the bodies were separated. It is specifically stated that blood had come out from the left eye to left ear of deceased Bharati due to nibbling by aquatic animals but, there were no other suspected marks. Her private parts were found to be intact. It is further noted that the eyebrows of both eyes of deceased Pramod were nibbled by aquatic animals but, there were no other suspected marks on his person. Post-mortem notes of deceased Bharati are at Ex-12. The post-mortem notes mention that there was small abrasion on left eyebrow. It is clearly stated that there were no other surface injuries. The cause of death is given as death due to asphyxia due to drowning. Post-mortem notes of deceased Pramod are at Ex-13. It is stated that there was abrasion over both eyebrows. It is clarified that there were no other injuries on his person. The cause of death is given as death due to asphyxia due to drowning.

24. The important witness of the prosecution is PW-1 Keshav. He has stated that the marriage of the deceased

and accused 1 took place in Jestha month. About 7 days after marriage, as per custom the deceased was brought to his house by his son PW-2 Prakash. She stayed there for about 5 to 7 days. She then went back to the house of her husband. She had again come to his house in Ashadha. She was sent back about 5 to 7 days thereafter. She was again brought to his house by his son PW-2 Prakash at the time of Divali festival. She stayed at his house for about 7 days i.e. till the festival was over. Then she was sent to the house of accused 1 with his son PW-2 Prakash. At that time, he had given a saree, a blouse and sweetmeats to the deceased. Then she was brought to his house in the month of Poushya. At that time, she stayed in his house for about one month. At that time, the deceased told him that her mother-in-law had told her that the clothes which were given to her at the time of Divali were of inferior quality and the sweetmeats brought by her were given by her to the cattle. She also told him that her mother-in-law was harassing her. PW-1 Keshav told her that everything will be alright after some days. Then, she was sent back to the house of her husband after Poushya month.

25. Then his son went to the house of the accused and brought the deceased to his house for Padva festival. At

that time, she stayed at his house for about 8 to 10 days. At that time, she told him that her husband used to say that she should bring money from her father as the other wives were bringing from their fathers. She told him that her husband had told her to bring Rs.5,000/- from her father. She also told him that her husband had told her that in case she does not bring the amount, he would not maintain her. According to PW-1 Keshav, he then collected Rs.5,000/- and handed over the said amount to the deceased for giving it to accused 1 and then she was sent back to the house of accused 1 with his son PW-2 Prakash.

26. Thereafter, in the month of Bhadrapada, the deceased was brought back to his house for delivery, by his son PW-2 Prakash and his wife. She then delivered a male child. For the naming ceremony of the child, accused 2 Kisabai and her elder daughter-in-law had come to his house. They had brought one gold locket. The child was named Pramod. Accused 2 and her elder daughter-in-law went back to their house. At the time of Akshaya Trutiya, the father-in-law of the deceased took the deceased and her child to his house. At the time of Panchami festival, the deceased and her child were brought back to his house by PW-1 Keshav. They stayed

there for about 8 to 10 days. At that time, she told him that her mother-in-law was harassing her and that he should make some ornaments for her child. Thereupon, he told her that it was not possible for him to make the ornaments as his financial condition was poor. He then purchased some clothes for his grandson and handed them over to the deceased. Then, he sent the deceased and her son with his son PW-2 Prakash to the house of the accused.

27. About 2 to 3 weeks thereafter, he had gone to the house of the accused. At that time, the deceased told him that her husband was insisting for a locket of half tola of gold for her son and a locket of two tolas of gold for himself. She also told him that her husband had told her that in case these ornaments were not given to him, he would not maintain her. He told her that he was not in a position to give those ornaments as his financial condition was poor. Ten to twelve days thereafter, at about 12 noon, the father of accused 1 had come to his house along with some other persons. He told PW-1 Keshav that the deceased had gone away with her child. He then searched for the deceased and her child. As they could not be found, he went to the house of the accused and informed them accordingly. On the next day,

at about 10.00 a.m., he had gone to Ashta police station. At that time, one person came to the police station and told him that the deceased was seen lying in a well. Thereafter, his complaint was recorded by the police, which is at Ex-16.

28. Evidence of this witness indicates that the ill-treatment and harassment to which the deceased was subjected was a persistent and gradual process. In the month of Poushya the deceased was taunted for having brought clothes and sweetmeats of inferior quality from her father. At the time of Padva festival, she told her father that her husband used to ask her to bring money from her father like other women and that he had threatened her that if she did not bring Rs.5000/- he would not maintain her. Somehow, he collected Rs.5000/- and gave her. In Bhadrapada, she delivered a child. At the time of Panchami festival, she told her father that her mother-in-law was harassing her and that some ornaments should be made for her son. On account of poor financial condition, he could not fulfill the demand. He could only manage to give her some clothes for the child. About 2 to 3 weeks thereafter, he had gone to her house. At that time, she told him that her husband was insisting that she should bring a locket of half tola of gold for

the child and a locket of two tolas of gold for himself and he had threatened that if these lockets were not given, he would not maintain her. This demand also cold not be fulfilled by him as he had no money. About 10 to 12 days thereafter, Bharati committed suicide.

29. The evidence of PW-1 Keshav is straightforward and clear. It reflects honesty. In unambiguous and clear words he has narrated the events, by referring to months by their Marathi names. The narration is consistent. No omissions have been brought out in his evidence. We have carefully perused Ex-19, the FIR lodged by him and we find that it is consistent with his evidence in the court. His evidence establishes a case of mental torture and harassment. It is definitely a form of cruelty and it led Bharati to commit suicide. While accepting the evidence of this witness, we must keep in mind that he is a 70 years old rustic person. He is a farmer staying in a small village. He had lost his daughter and seven year old grandson. Despite his bereavement he has not lost his balance. He has not involved the father-in-law and the other members of the accused's family. This conduct assures us of the truthfulness of his evidence. His evidence provides a chain of events which led to the suicide. His evidence is natural and free from any

exaggeration. There is no challenge to his evidence in the cross-examination. We have no hesitation in relying on this witness.

30. We are not impressed by Mr. Pradhan's argument that because PW-1 Keshav has not given instances of any beating or depriving the deceased of food and clothes by the accused, there is no harassment or ill-treatment or cruelty. Harassment or ill-treatment or cruelty has no particular form. It differs from case to case. In our opinion, taunting the deceased, asking her to bring money and gold from her father and threatening her that in case she does not bring it she would not be maintained, would certainly amount to mental cruelty.

31. That takes us to the evidence of PW-2 Prakash, who is the brother of deceased Bharati. PW-2 Prakash has also given the same sequence of events which his father PW-1 Keshav had given except that he has only narrated the facts upto Panchami festival. We do not find any inconsistency in the evidence of PW-1 Keshav and PW-2 Prakash so far as these instances are concerned. In the cross-examination of this witness, it is suggested to him that he had not stated in his statement that at the time

of Panchami festival when his sister had come to their house, she had told them that her mother-in-law was harassing her. His attention was not drawn specifically to his statement. However, PW-6 PHC Shinde, who has recorded the statement of PW-2 Prakash has clearly stated in his cross-examination that in his statement PW-2 Prakash has stated that at the time of Panchami festival when his sister had come to their house, she had told them that her mother-in-law was harassing her. Another omission is sought to be proved in the cross-examination of PW-6 Shinde that this witness has not stated in his statement that at the time when deceased Bharati had come to her father's house for delivery, she had told him that her husband and mother-in-law were harassing her on account of money and ornaments. However, the attention of this witness has not been drawn to the alleged omission in his police statement. Even assuming that PW-2 Prakash has omitted to say the above facts, we do not attach much significance to this fact. These omissions do not appear to us to be major omissions. It is true that PW-2 Prakash has not deposed about the last incident. But, on that count, we are not inclined to discard his evidence as regards events upto the Panchami festival as there is no inconsistency between his evidence and his father's evidence about those events.

It is also significant to note that there is no challenge to his evidence in the cross-examination.

32. That takes us to the evidence of two witnesses, who are neighbours. One is PW-4 Vijaykumar, who has stated that whenever the deceased used to come to the house of her father, she used to meet him. She had told him that her husband used to demand money and ornaments and that her mother-in-law was harassing her. PW-3 Pratap Shinde is also a neighbour. He has stated that the deceased had come to the house of her father in the month of Poushya. At that time, she had told him that her mother-in-law had told her that she was given clothes of inferior quality and that her mother-in-law was harassing her. He has further stated that she had come again at the time of Padva festival. At that time, she had told him that her husband had demanded money. Thereafter, she had come to the house of her father at the time of delivery. At that time, she had told him that she was harassed in the house of the accused. She had also told him that her husband and mother-in-law used to harass her on account of money and ornaments. It appears that this witness had not stated in the police statement that at the time when the deceased had come to her father's house for delivery, she had told him that her husband and mother-in-law were

harassing her on account of money and ornaments. But this omission does not discredit his evidence.

33. It was argued very vehemently by Mr. Pradhan that the prosecution ought to have examined some neighbours of the accused to prove its case of harassment or ill-treatment. It is common knowledge that in such matters the neighbours of the accused are weary of getting involved. It is difficult to get such witnesses. We, therefore, do not feel that this is a lacuna in the prosecution case. In such cases, it is possible that a woman may confide certain facts in the neighbours of her father, who may be known to her from her childhood and they may perhaps depose about those facts. The learned judge, however, has discarded their evidence on the ground that their evidence does not inspire confidence because these witnesses have no personal knowledge about the ill-treatment. We wonder what personal knowledge these witnesses can have because, such ill-treatment is always meted out in the house of the husband of a woman.

34. But in our opinion, even if this evidence is obliterated and kept out of consideration, the conviction could be based on the evidence of PW-1 Keshav and PW-2 Prakash. At some stage, pointing out to the panchnama of

scene of offence, it was suggested that it could be a case of accident as the well was not constructed. We have no hesitation in rejecting this submission. The deceased had tied her seven month old child with a chaddar to herself. Accidents do not happen in this manner. The fact that deceased Bharati was found in the well with her child tied to her body indicates that it is a clear case of suicide.

35. It is now necessary to see what offence the accused could be said to have committed. It is true that all along it is stated by PW-1 Keshav and PW-2 Prakash that the deceased used to tell them that her mother-in-law was harassing her. But, the proximate cause for the suicide appears to be the demand made by accused 1 for a locket of half tola of gold for the child and a locket of two tolas of gold for himself and the threats given by her husband that if these lockets were not given, he would not maintain her. This demand was made about 10 to 12 days prior to her death. This was told to PW-1 Keshav when he had gone to her just 10 to 12 days prior to the incident. Prior to that, even when the deceased had come to the house of her father for Padva festival, she had told him that her husband used to ask her to bring money from her father as the other wives were bringing from

their fathers. She told him that her husband had told her to bring Rs.5,000/- from her father or else, he would not maintain her. PW-1 Keshav had to somehow arrange Rs.5,000/- and give it to the deceased for giving it to accused 1. Therefore, in our opinion, though it appears that the mother-in-law i.e. accused 2 Kisabai was on and off passing certain comments, that would not amount to cruelty within the meaning of section 498A of the IPC. The wilful conduct, which drove Bharati to commit suicide could only be attributed to accused 1 Subhash.

36. Now the question is what offences accused 1 could be said to have committed. It is true, as contended by the learned A.P.P., that after the amendment of the Dowry Prohibition Act there is addition of the words "any time" before the expression "after the marriage" in the definition of the term "dowry" and, therefore, even if the demand is made long after the marriage the same could constitute dowry, if it has connection with the marriage of the parties. Therefore, merely because a demand is made long after the marriage, it may not be outside the ambit of dowry. Our attention has been drawn by Mr. Pradhan to **Satvir Singh's case (supra)** where the Supreme

Court has taken a similar view but has added a rider. We may quote the relevant paragraph.

> "Thus there are three occasions related to dowry. One is before the marriage, second is at the time of marriage and the third is "at any time" after the marriage. The third occasion may appear to be unending period. But the crucial words are "in connection with the marriage of the said parties". This means that giving or agreeing to give any property or valuable security on any of the above three stages should have been in connection with the marriage of the parties. There can be many other instances for payment of money or giving property as between the spouses. For example, some customary payments in connection with birth of a child or other ceremonies are prevalent in different societies. Such payments are not enveloped within the ambit of "dowry". Hence, the dowry mentioned in section 304-B should be any property or valuable security given or

agreed to be given in connection with the marriage."

37. In the facts of this case, the lockets for which a demand was made were meant for the Javal ceremony of the child. It is possible to view it in the facts of this case as a customary payment on the birth of a child. Therefore, we cannot describe it as a property agreed to be given in connection with the marriage. Therefore, section 304B of the IPC, in our opinion, would not be attracted in this case. In view of this, it is not necessary for us to refer to the arguments on the concession made by the learned Public Prosecutor before the Sessions Court.

38. We are, however, of the opinion that in this case, an offence under section 306 of the IPC is clearly made out. We have already referred to the evidence of PW-1 Keshav. We have already noted that his evidence inspires confidence. From the evidence of PW-1 Keshav and PW-2 Prakash, it is clear that accused 1 is guilty of cruelty. There is no dispute about the fact that Bharati died in suspicious circumstances within seven years of her marriage. Once it is held that the deceased was subjected to cruelty by her husband, the presumption

under section 113A of the Evidence Act would come into play. It reads thus:

> "113A. Presumption as to abetment of suicide by a married woman. - When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband."

It is surprising that this presumption should not cross the mind of the learned Sessions Judge. He has not even referred to it. This presumption has not been rebutted by the accused by leading any evidence.

39. In this connection, we may refer to the judgment of the Supreme Court in **The State of Punjab v. Iqbal Singh**

and others, AIR 1991 SC 1532. In that case a woman had set herself and her three children ablaze at the residence of her husband. Before putting an end to her and her children's lives, she addressed a letter to the Deputy Commissioner of Police stating therein the demand for money made by her husband and ill-treatment given to her. The trial court convicted the accused i.e. the husband, the mother and the sister under section 306 of the IPC. The High Court, however, acquitted them. The Supreme Court set aside the order of acquittal. While disapproving the High Court's approach, the Supreme Court noted the legislative changes introduced in the Penal Code to combat crimes against women. The Supreme Court referred to sections 304B, 306 and 498A of the IPC and sections 113A and 113B of the Evidence Act and observed :

> "The legislative intent is clear to curb the menace of dowry deaths, etc., with a firm hand. We must keep in mind this legislative intent. It must be remembered that since such crimes are generally committed in the privacy of residential homes and in secrecy, independent and direct evidence is not easy to get. This is why the legislature has by introducing

> Ss.113A and 113B in the Evidence Act tried to strengthen the prosecution hands by permitting a presumption to be raised if certain foundational facts are established and the unfortunate event has taken place within seven years of marriage. This period of seven years is considered to be the turbulent one after which the legislature assumes that the couple would have settled down in life. If a married woman is subjected to cruelty or harassment by her husband or his family members S. 498A, I.P.C. would be attracted."

The Supreme Court then specifically referred to section 306 of the IPC and observed :

> "Then we have a situation where the husband or his relative by his wilful conduct creates a situation which he knows will drive the woman to commit suicide and she actually does so, the case would squarely fall within the ambit of S.306, I.P.C. In such a case the conduct of the person would tantamount to inciting or provoking or

> virtually pushing the woman into a desperate situation of no return which would compel her to put an end to her miseries by committing suicide."

After referring to the cruelty meted out to the deceased, the Supreme Court concluded that the husband had been responsible in creating circumstances which would provoke or force the woman into taking the only alternative left open to her namely, suicide.

40. We draw support from the above observations of the Supreme Court. In the circumstances of the case, the straightforward and honest testimony of the father can be safely relied upon to bring home guilt to accused 1. Crimes against women are committed in the privacy of residential homes and in secrecy. How can one get independent evidence to establish them? If independent evidence is insisted upon, there can be no convictions even in cases where the accused deserve to be convicted. Apart from the testimony of the father, the manner in which the lady jumped in the well itself suggests that the cruelty had reached such intolerable level that the deceased wanted to end her life with her nine month old son tied to her body with a chaddar. There is no

evidence led to suggest that the deceased was a sohizoprenic. What else would drive her to take such extreme step but the wilful conduct of her husband of causing mental torture to her and pestering her to get gold lockets from her father? The presumption under section 113A of the Evidence Act to which even a reference is not made by the trial court comes to the aid of the prosecution. We have not the slightest doubt that accused 1 is guilty of the offence under section 306 of the IPC.

41. Reliance was placed by Mr. Pradhan on **Sanju's case (supra)**. In that case a quarrel had taken place between the appellant and the deceased on 25/7/1998, wherein it was alleged that the appellant had used abusive language and told the deceased "to go and die". The Supreme Court was of the view that in the facts of that case the words "to go and die" did not constitute the ingredients of instigation. The Supreme Court also came to a conclusion that the alleged abusive words were used on 25/7/1988 and the deceased was found hanging on 27/7/1988. Therefore the suicide by the deceased was not proximate to the abusive language used by the appellant. Mr. Pradhan urged that similarly in the present case the alleged demand of gold locket cannot be called the proximate

cause of suicide and, hence, the accused cannot be convicted under section 306 of the IPC.

42. We are unable to agree with Mr. Pradhan. In **Sanju's case (supra)**, the Supreme Court after reading the suicide note came to a conclusion that the deceased was in great stress and depressed. The suicide note was not the handiwork of a man with sound mind and sense. Moreover, the deceased was given to excessive drinking. It was further observed that the deceased was a victim of his own conduct unconnected with the quarrel that had ensued on 25/7/1988. It is against the backdrop of these facts that the Supreme Court observed that the quarrel was not the proximate cause of suicide. Such are not the facts here. PW-1 Keshav's evidence clearly establishes the persistent demands of money and gold lockets made on the deceased. Just 10 to 13 days prior to the incident, PW-1 Keshav was told by the deceased that her husband had told her to get a locket of half tola of gold for her son and a locket of two tolas of gold for himself and he had further threatened her that if she did not bring the lockets, he would not maintain her. PW-1 Keshav had expressed her inability to fulfill this demand obviously because he had no money. Within a short time thereafter the deceased was found lying in a well with her nine

month old son tied to her body with a chaddar. There cannot be a better case where the prosecution can be said to have established abetment to commit suicide than the present case.

43. In this connection we may refer to **Satvir Singh's case (supra)** on which Mr. Pradhan has placed reliance. In that case, the victim attempted to commit suicide but did not succeed. The attempt resulted in maiming her. The Supreme Court held that section 306 of the IPC renders the person who abets the commission of suicide punishable for which the condition precedent is that suicide should necessarily have been committed. It is possible to abet the commission of suicide. But nobody would abet a mere attempt to commit suicide. But while so holding, the Supreme Court observed:

> "Section 306 IPC when read with Section 113A of the Evidence Act has only enabled the court to punish a husband or his relative who subjected a woman to cruelty (as envisaged in Section 498-A IPC) if such woman committed suicide within 7 years of her marriage. It is immaterial for Section 306 IPC whether the cruelty or harassment

was caused "soon before her death" or earlier."

These observations would be clearly applicable to the present case.

44. In our opinion, the prosecution has clearly made out its case against accused 1. Assuming there are certain variations and infirmities in the evidence, the prosecution case cannot be thrown overboard on that ground if it is consistent as regards its core. In this connection, we may usefully refer to the observations of the Supreme Court in **Shardul Singh v. State of Haryana, (2002) 8 SCC 372**. The following are the material observations of the Supreme Court.

"There cannot be a prosecution case with a cast-iron perfection in all respects and it is obligatory for the courts to analyse, sift and assess the evidence on record, with particular reference to its trustworthiness and truthfulness, by a process of dispassionate judicial scrutiny adopting an objective and reasonable appreciation of the same, without being

obsessed by an air of total suspicion of the case of the prosecution. What is to be insisted upon is not implicit proof. It has often been said that evidence of interested witnesses should be scrutinized more carefully to find out whether it has a ring of truth and if found acceptable and seems to inspire confidence, too, in the mind of the court, the same cannot be discarded totally merely on account of certain variations or infirmities pointed or even additions and embellishments noticed, unless they are of such nature as to undermine the substratum of the evidence and found to be tainted to the core. Courts have a duty to undertake a complete and comprehensive appreciation of all vital features of the case and the entire evidence with reference to the broad and reasonable probabilities of the case also in their attempt to find out proof beyond reasonable doubt."

45. There can be no doubt that offences against women need firm handling by the courts. It is true that

innocent person should not be sentenced but that does not mean that the guilty should be allowed to go scot-free by finding trivial defects in the investigation and minor variations in the evidence. The stupendous rise in crime against women can only be checked by adopting a pragmatic approach. The courts have to be sensitive to the plight of a women trapped in the alien atmosphere of the husband's house. The courts cannot insist on extraordinary standard of proof. Quite often there are rustic witnesses who get flustered in the court. Evaluation of their evidence will have to be done by keeping their background in mind. Without doing violence to the basic principles of criminal jurisprudence the courts will have to acquire a not too rigid approach to get at the truth so that justice can be secured to women who are victims of grave crimes.

46. We feel that the impugned judgment must be characterised as perverse. The learned judge has not considered the effect of section 113A of the Evidence Act. No acceptable reasons have been given by the learned judge to discard the truthful version given by the father of the deceased. On the contrary, the learned judge has observed that "From the evidence adduced by the prosecution it is clear that the witnesses examined have

no personal knowledge about the harassment or demand made by the accused. Their knowledge is from deceased Bharati only". We fail to understand what other evidence could have been led in a case of this type. Knowledge of harassment would obviously be from the deceased. We feel that the learned judge has dealt with this serious case very lightly.

47. Surprisingly, the learned judge has held that there is nothing on record to show that deceased Bharati had told her husband, namely, accused 1 Subhash that her father was not in a position to give the ornaments to them. We wonder what difference it would have made if deceased Bharati had told her husband that her father was poor and not in a position to give the ornaments. It is true that in an appeal against acquittal, if the view taken by the trial court is found to be a reasonable possible view, this court should not interfere with it and if two views are possible, the one which is in favour of the accused should be preferred and merely because this court is of the opinion that some other view is possible it cannot take that view. But in our opinion, the view taken by the trial court could never have been taken by it on the facts, which were before it. We are, therefore, of the view that the acquittal of accused 1

under sections 306 and 498A of IPC needs to be overturned.

48. Now the question is whether acquittal order could be interfered with after 18 years. In this connection, we may usefully refer to the judgment of the Supreme Court in **State of U.P., v. Dr. Ravindra Prakash Mittal, AIR 1992 SC 2045**. In that case, the accused was acquitted as far back in October, 1977. The appeal was taken up for hearing after 14 years. The Supreme Court observed that if the impugned judgment of acquittal reversing the well reasoned judgment of the trial court, convicting the respondent is affirmed, it will be nothing but a mockery of justice and will also amount to perpetration of gross and irreparable injustice. Moreover, when a judgment appealed against suffers from illegality or manifest error or perversity, warranting an interference at the hands of an appellate court in the interest of justice on substantial and compelling reasons, the mere delay in the disposal of the said appeal will never serve as a ground for non-interference and on the other hand, the appellate court is duty bound to set at naught the miscarriage of justice.

49. In view of this, we have no hesitation in reversing

the order of acquittal of accused 1 Subhash so far as it relates to sections 306 and 498A of the IPC is concerned.

Hence, the following order:

O R D E R

(a) The impugned judgment and order dated 11/8/1988 passed by the Sessions Judge, Sangli so far as it acquits accused 2 Kisabai Aba Bodke is concerned, it is confirmed. So far as accused 1 Subhash Aba Bodke is concerned, his acquittal under section 304B of the IPC is confirmed. However, his acquittal under sections 306 and 498A of the IPC is quashed and set aside. For the offence under section 498A of the IPC, accused 1 Subhash Aba Bodke is sentenced to suffer RI for three years and to pay a fine of Rs.5,000/- and in default to suffer RI for six months. For the offences under section 306 of the IPC, accused 1 Subhash Aba Bodke is sentenced to suffer RI for five years and to pay a fine of Rs.5,000/- and in default to suffer RI

for six months. Out of the fine amount, a sum of Rs.3,000/- be paid, as compensation, to PW-1 Keshav Nivrutti Shinde and, if he is dead, to his heirs.

(b) The substantive sentences shall run concurrently.

(c) Accused 1 Subhash Aba Bodke is on bail. His bail bond stands cancelled. He is given eight weeks time to surrender.

(SMT. RANJANA DESAI, J.)

(A.S. OKA, J.)